

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH KERNOSEK, *et al.*,

Case No. 1:08-CV-41

Plaintiffs,

Hon. Richard Alan Enslen

v.

BARBARA SAMPSON, *et al.*,

ORDER

Defendants.

This is a civil action brought by three state prisoners pursuant to 42 U.S.C. § 1983. Plaintiff Joseph Kernosek seeks to appeal *in forma pauperis* this Court's dismissal of Plaintiffs' Complaint pursuant to 28 U.S.C. § 1915A and 42 U.S.C. § 1997e(c).¹ In the Court's Judgment of April 16, 2008, the Court certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith. *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). The certification under § 1915(a)(3) does not affect Plaintiff Kernosek's responsibility to pay the entire appellate filing fee pursuant to § 1915(b)(1) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134. *Id.* at 610-11.

The fee for appealing a civil action is \$455.00. Normally, a plaintiff must pay a portion of the appellate filing fee as an initial partial filing fee. *Id.* at 611. The initial partial filing fee is 20 percent of the greater of (a) the average monthly deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1); *McGore*, 114 F.3d at 606, 611. According to the certified

¹Plaintiffs Clinton Lance and Stephen Peeters have yet to file the financial documentation required by 28 U.S.C. § 1915(a)(2). The deadline for such filing is 30 days from May 29, 2008. (*See* Deficiency Order for Notice of Appeal 2.)

copy of Plaintiff Kernosek's prison trust account statement, he had an average monthly deposit of \$147.16. Twenty percent of Plaintiff Kernosek's average monthly deposit is \$29.43. Plaintiff Kernosek's prison trust account statement indicates he has financial resources to pay the initial partial filing fee.

Once Plaintiff Kernosek has paid the initial partial filing fee, he must pay the remainder of the filing fee through monthly payments of 20 percent of the preceding month's income credited to his prison trust fund account. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 606. These payments will be forwarded by the agency having custody of Plaintiff Kernosek to the Clerk of this Court each time the amount in his trust account exceeds \$10.00, until the filing fee of \$455.00 is paid in full. 28 U.S.C. § 1915(b)(2); *McGore*, 114 F.3d at 607-08; *Hampton v. Hobbs*, 106 F.3d 1281, 1284 (6th Cir. 1997). The check or money order shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made. If the amount in Plaintiff Kernosek's account is \$10.00 or less, no payment is required for that month. *Hampton*, 106 F.3d at 1284-85. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to Proceed *in Forma Pauperis* on Appeal (Dkt. No. 20) is **GRANTED IN PART** and Plaintiff Joseph Kernosek will pay the initial partial filing fee of \$29.43. Ruling on Plaintiffs Clinton Lance and Stephen Peeters' Motion for Leave to Proceed *in Forma Pauperis* on Appeal is **DEFERRED** pending determination after receipt of Plaintiffs Lance and Peeters' prison trust account statements.

IT IS FURTHER ORDERED that after the initial partial filing fee has been paid, the agency having custody of Plaintiff Kernosek shall collect the remaining filing fee of \$425.57. As outlined above, each month that the amount in Plaintiff Kernosek's account exceeds \$10.00, the

agency having custody of him shall collect 20 percent of the preceding month's income and remit that amount to the Clerk of this Court. The agency shall continue to collect monthly payments from Plaintiff Kernosek's prisoner account until the entire filing fee of \$455.00 is paid.

IT IS FURTHER ORDERED that the Clerk shall certify a copy of this Order to the Court of Appeals pursuant to Fed. R. App. P. 3.

DATED in Kalamazoo, MI:
June 19, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE